

## Judge Kimball Reversed

COURT OF APPEALS SUSTAINS ATTORNEY JONES AND CLINKSCALES. THE KIMBALL-TILLMAN VAGRANCY CASE UPSET.

In the Police Court some weeks ago Attorneys Thomas L. Jones and Marion T. Clinkscales defended a man by the name of Jerry Fleming, charged with vagrancy. He was convicted the case to the Court of Appeals on a writ of error, stating that the plaintiff in error was tried and convicted in the Police Court, March 30, 1909, upon an information charging him with being a vagrant, and the information set forth that plaintiff in error.

"On the 3rd day of March in the year nineteen hundred and nine, at and within the District of Columbia, was then and there, and has been ever since that day, and still is a vagrant, to wit; an idle person; a person without visible means of support; a person repeatedly in and about the streets, avenues, alleys, roads and highways, and leading an idle and immoral life, found repeatedly in and around tippling houses on said streets and avenues, contrary to and in violation of an act for the preservation of the public peace and the protection of the property in the District of Columbia approved July 8th, 1898, amended March 3rd, 1909, and constituting a law of said District (Rec. 1-2.)

The District of Columbia, at the trial of the case, produced three witnesses to maintain the issues on its part joined.

The first witness (George Wilson) testified that on the evening of March 6, 1909, about 9 o'clock p. m., defendant followed him from Ninth Street and Pennsylvania Avenue to an alley at Third Street and Pennsylvania Avenue, and as he went into the alley to get his horse from the stable he left the defendant and another man standing at the mouth of the alley, and when he came out, defendant and the other man followed him (witness) from the alley to Ninth Street and Pennsylvania Avenue, that defendant hissed at him on the way. On arriving there witness asked defendant what he wanted; defendant replied by asking witness if he wanted to do business and invited him into a lumber yard. Witness then got off his carriage and chased defendant until he was arrested. Witness had only seen defendant once or twice before on the avenue, had no knowledge where he worked or what his past life had been. The second witness for the District (William Main) testified substantially to the same effect as Wilson, excepting that when Wilson came out of the alley with their horse and carriage the defendant with another light colored man hallowed, "Hello, Blonnie," and "Oh, you kid, and whistled at them. Witness did not know the defendant, had never seen him before and knew nothing of the defendant, except what occurred that night. The last witness was Officer J. H. Lee, who said he found the two witnesses, Wilson and Main, chasing defendant, that defendant ran into his arms and that he had never seen defendant until he arrested him. (Rec., pp. 2-3) This was all the testimony offered by the District.

Thereupon counsel for defendant moved the court to discharge the defendant, first, because of the insufficiency of evidence to sustain the charge as set forth in the information, and, second, because the only evidence offered against defendant in support of any of the several distinct charges of vagrancy as set forth in the information was the testimony of the two witnesses, which said witnesses only testified to one act, or attempted act, neither of which constituted the charge of vagrancy under the law covering such offenses in the District of Columbia. The court overruled said motion and exceptions were noted. (Rec., p. 3.)

The defendant in order to maintain the issue on his part joined, produced three witnesses with himself. The first witness (Frank Dunnington) testified that he had been for several years well acquainted with the de-

fendant; that defendant was at the time and had been for more than two years employed at No. 1105 K Street, northwest; he had never heard of defendant being arrested before; that on March 6, 1909, he met defendant at Seventh Street and Pennsylvania Avenue; he did not remember seeing any of the witnesses who testified against defendant on the evening in question; that he and defendant did not follow two men down to Third Street and Pennsylvania Avenue, nor was it true that he or the defendant on the evening aforesaid hallowed, "Hello, Blonnie," or "Oh, you kid," and it is not true that defendant asked said witnesses if they did not want to do business or make any other remark to them in his presence; that he and defendant separated at Ninth Street and Pennsylvania Avenue about 9.15 p. m., and he never saw defendant any more until the next day in court.

The next witness (Mary R. Fleming) testified that defendant lived in Anacostia, had a good home, is 21 years of age, never arrested before and had been employed as a cook in a boarding house on K Street, northwest, for two years, did not drink or loiter around, but was a model boy and was her son. (Rec., pp. 3-4.)

The defendant in his own behalf testified that on the evening of March 6, 1909, he left his place of employment about 8.30 p. m., and went down to Seventh Street and Pennsylvania Avenue, northwest, where he met Frank Dunnington by engagement, that he and said Dunnington proceeded up Pennsylvania Avenue to Ninth Street, where they stood and talked for a while and then separated.

After leaving Dunnington and while standing near the Bijou Theatre, two white men approached him and asked what he was standing there for, defendant informed them that they had nothing to do with him, and one word brought on another. One of the men left the carriage and chased him with a whip until he ran into the arms of a policeman, who placed him under arrest.

Defendant denied he followed the witness for the prosecution up and down Pennsylvania Avenue, and denied using the words, "Hello Blonnie," or "Oh, you kid," or that he asked them to a lumber pile to do business or any other place. Defendant further testified that he had been employed for two years continuously as cook and received as wages \$17 per month. (Rec., p. 4.)

This was all the testimony offered and the court adjudged the defendant guilty as charged in the information.

Counsel for the defendant moved the court arrest of judgment, and for a new trial upon the following grounds:

(a) Because of the judgment of the court was contrary to the law governing the case. (b) Because of the insufficient evidence to sustain the charge of vagrancy as set forth in the information. (c) Because said information is founded upon the act of Congress of July 8, 1898, which act was repealed by the act of Congress of March 3rd, 1909, as far as the law of vagrancy is concerned in the District of Columbia. (d) Because said information does not change any offense, either under the act of March 3, 1909 or under the act of July 8, 1898, and hence the conviction is void. (e) And because the act of March 3, 1909, is unconstitutional and void, in that it deprives the accused of the right of the trial by jury, yet gives the trial judge power and authority to sentence him to imprisonment for a term of one year or require him to give bond for a period of one year for his good behavior.

The court overruled this motion and exceptions were noted.

Thereupon the defendant was sentenced to give bond in the sum of \$300, in default to be committed to the Workhouse for the period of ninety days. (Rec., pp. 4-5.)

Recognition was given in the sum of three hundred dollars in compliance with the rules of the court, and the case is now here for review. (Rec., p. 6.)

The principal argument was made by Attorney Jones, who in clean cut



PRESIDENT WM. H. TAFT

English and legal eloquence convinced the Court of Appeals that Judge Kimball and Senator Tillman's vagrancy law should not be upheld. It was the unanimous opinion of the Court that proof of one immoral act does not bring one within this provision.

Judge Muldowney who is now sitting in the lower court recently vacated by Judge Kimball has dismissed several defendants who have been brought before him under this act. There are several dozen in the Workhouse who have been convicted under this act and will likely sue out a writ of habeas corpus.

### NEGRO BUSINESS LEAGUE

The Action of the Executive Committee Sustained.

There was a large meeting of the Negro Business League held in its new headquarters last Monday evening, 11th and You Streets, N. W.

President W. Sidney Pittman, in the chair and Attorney Geo. F. Collins correspondent secretary, and Attorney Herman, recording secretary. The first business in order was the reading of the minutes of the September meeting at which time the Executive Committee recommended the dismissal of J. A. Lankford.

Mr. W. R. Griffin at this juncture attempted to explain the cause of Mr. Lankford by objecting to the adoption of the minutes in which the report of the Executive Committee was expelling Lankford.

Mr. Chase, chairman of the Executive Committee moved their adoption, this motion having been recorded by Attorney T. L. Jones, and the question being put the minutes were adopted without a dissenting vote. Not even did Chief Griffin vote against their adoption.

Chief Griffin not being satisfied after the adoption of the minutes made an attempt to reconsider, but the chair ruled him out of order.

Mr. Freeman and Dr. Gatchway wanted to know why Mr. Lankford was expelled. On a point of order from Attorney Jones the question of expulsion of Lankford was a closed incident.

Mr. Lankford not being satisfied, took the floor and appealed to the meeting to hear him. He made many threats, but President Pittman ruled him out of order, and ordered him to desist as he had been expelled. The next business in order was the adoption of the minutes of the October meeting which contained lots of comments. On motion of Mr. Chase, the minutes were adopted less comment.

The Executive Committee made a recommendation for the annual banquet, and that it be a stag affair. The committee also recommended the appointment of a committee to manage the banquet.

After the collection of dues and the transaction of other minor business the meeting adjourned.

## PARAGRAPH NEWS

Miss Gonia B. Maxfield

A hotel for girl students has been opened in Tokio, by the Young Woman's Christian Association. It is said the number of Japanese students are increasing rapidly, but slow progress is being made in breaking down the prejudices against women in business. While there are many women earning their own living, the chief interest of every woman is to get a husband.

Possibly the most novel honeymoon on record, was that of Sampson Tilton, and his bride, of Huntington, W. Va., who enjoyed a ten-day honeymoon in a cave. The two, both of whom are in their teens, eloped because of parental objections.

A large number of colored residents of Benning, D. C., met last night in the Jones' M. E. Church, and after a general discussion, formed a Citizens' Association. The needs of the schools and other desired improvements were discussed. A feature of the evening was the large number of women present, and the lively interest taken by them in the proceedings.

Benjamin B. Hampton, of Yonkers, N. Y., editor of Hampton's Magazine, has engaged Commander Peary to write 50,000 words at \$1.20 per word on the incidents leading to the discovery of the North Pole. This is said to be a larger sum than Col. Roosevelt is to receive from the Outlook for Narratives of travels in Africa.

The National Academy of Sciences will meet at Princeton University, November 16. This meeting will bring together a large number of American scientists.

The American Hospital, built and equipped through the generosity of the American colony in Paris, was opened last week in there.

The hospital, the need of which has long been felt is beautifully situated at Neuilly, where it is surrounded by spacious grounds. It contains twenty-five beds, many of which have already been endowed.

Among those who have contributed are: J. P. Morgan, W. K. Vanderbilt and Miss Helen Gould.

John D. Rockefeller's donation of \$1,000,000 to fight the dreaded disease, "Hookworm" so prevalent north of the Potomac and Ohio Rivers, will mean a great deal toward helping to wage war on the malady.

New York is to have another hundred-million dollar bank, to be known as the Mechanics and Metals National. This new banking institution, is a consolidation of the Mechanics' National Bank, founded 100 years ago, and the Metropolitan National Bank.

A conservator will be appointed for Mrs. Lucinda Treat Goddard, the seventy-year old bride of Charles R. Goddard, a Yale student, who but recently reached his twenty-first birth-

day. The court said that Mrs. Goddard's changed attitude toward men, and her marriage to a young man and childish caprice, marked ethical insensibility, indicative of mental impairment and disease.

Tatem Parsons, the first engineer of the famous locomotive "John Bull," died in Camden, N. J., November 5th. He was ninety years old. Besides having been the first man to handle the throttle of the famous engine now in the National Museum, he was the oldest locomotive engineer in this country.

It was found that the rumor was not true that Col. Roosevelt had lost his life in the wilds of Africa.

An interesting article appeared in the Charleston Messenger by Mrs. Namie Blocker, "Let us look after our boys." Among other things she said: "Instead of giving all of your you spend some of them making evenings to men friends, why don't friends with your boy." This is certainly true, so many fathers spend their evenings at clubs, dances or whist parties, while their sons are running wild in the streets. Fathers take heed.

ago, and the National Copper Bank, organized about three years ago.

The new fourteen-inch gun built by the Midvale Steel Company of Bethlehem, Pa., is now in this city at the navy yard. When it is entirely finished it will be taken to Indian Head, where a test will determine whether it is a better weapon for naval purposes than the present twelve-inch gun.

A hundred dollars worth of steel appliances and construction in the new plant of the Corrigan McKinney Co., in the Cuyahoga River bottom was blown up by dynamite, also of the Newburg and Southshore Railroad were wrecked. Labor troubles.

"PRINCE" HUNLEY Gets \$2,000 Reward in the Whittaker Kidnapping Case.

Cleveland, O., Nov. 8.—"Prince" Hunley, superintendent of the service of the Hollenden Hotel, who was awarded \$2,000 for his participation in the capture of Billy Whittaker's kidnapers, was the most surprised man in Cleveland when the information of his good fortune reached him.

"Prince," whose real name is William H. Hunley, has been employed at the Hollenden continuously for 20 years, and is known by prominent men who have stayed there at various times as the ever-ready, courteous major-domo who attends to the general conduct of the hotel service.

Hunley is forty years old. He was born in Springfield, Ohio, and received his education in the public schools of that city. When a youth his father died, leaving his mother and two sisters dependent upon him for support.

Goes Up in Service Prince came to Cleveland and obtained a position in the dining room of the Hollenden. In 30 days he was promoted to head waiter, and from that position to superintendent of service.

Prince is very modest about his part in the Whittaker case for which he will receive the reward. He insists that it was only the result of his presence at a place where he was needed and more of a matter of luck.

Hunley said when interviewed: "When I receive the money I shall invest it, or rather add it to some money which came to me from the estate of Colonel C. P. Barrett. Colonel Barrett lived here at the hotel, and remembered me in his will to the extent of \$2,500. Upon the suggestion of some gentlemen who are interested in my welfare, I invested it, and it is to that I shall add the reward money."

HOWARD THEOLOGICAL NIGHT SCHOOL

The evening training classes for ministers and Christian workers have become an interesting feature of the Howard School of Theology. More than fifty students are now enrolled from among the city pastors and active Christian workers. Its continued growth and enlargement are assured.

Inquiries may be made of President Thirkield, Dean Clark or Prof. Sterling N. Brown.

### ATTORNEY FLEMING ELECTED

The eyes of the people throughout the country were turned to the city election in Cleveland, Ohio this fall. For nine years Tom L. Johnson, Democrat, has been mayor of Cleveland. His "three cent" street car theory has given him a national reputation. He was four times elected mayor of Cleveland and was up for a fifth term.

The Republicans nominated Herman C. Baehr, the present county recorder, and a strong city ticket. According to the new law, all nominations were made at primary elections. In Cleveland there are thirty-two councilmen, six of whom are councilmen-at-large, representing the entire city.

At the primaries there were thirty candidates for the six places. Thomas W. Fleming came out fourth. He was elected Tuesday, November second, by a large plurality. Mr. Fleming will be the first Negro to ever have a seat in the Cleveland city council, and the first in the state of Ohio elected councilman-at-large.



MR. THOMAS W. FLEMING

Thomas W. Fleming was born in Pennsylvania. He came to Cleveland seventeen years ago. He is thirty-five years old. He is an attorney-at-law, graduating from the Cleveland Law School Baldwin University, in 1906. Mr. Fleming is vice president and treasurer of the Journal Publishing Company, publishers of The Cleveland Journal. He has taken an active part in politics for a decade. Twice he was appointed a member of the Republican State Executive Committee. Last year he was an alternate to the National Republican Convention in Chicago. Mr. Fleming is popular and a good mixer. He will no doubt make a good councilman.

### DEATH OF MRS. WASHINGTON

Mrs. Henrietta Washington, who died on the 20th, was buried from her late residence, 1214 Tea St., N. W. at 3 o'clock p. m. Thursday, the 4th. The service was conducted by Rev. Toller, pastor of the Liberty Baptist Church, was simple, but solemn and impressive.

The deceased had been a constant, but patient sufferer for twelve years previous, and during this period she was at all times most devotedly and tenderly cared for by Miss Sarah B. Washington, her only surviving child—she was a member of the Liberty Baptist Church, and of the Ladies' Immediate Relief Society.

Her sisters and brothers who survive her are, Mrs. Sarah Washington and Mrs. Maria Randolph, of this city, Mrs. Lucy Carter, Boston; Messrs. Robert F. Washington, Poughkeepsie, N.Y., and James Washington, Galveston, Texas.

The floral tributes (some of which were from New York City) were many and beautiful. The deceased left a large circle of warm hearted friends who deeply sympathize with the family and especially with the daughter, who, for so many years remained with, and in every way showed such affection for and untiring, praise worthy devotion to her afflicted mother.

Howard and Lincoln will meet, Thanksgiving day in the annual football battle on Howard University campus.